

Serial No. 10/765319

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Heinz Lambrecht

Examiner: Len Tran

Serial No.: 10/765319

Group Art Unit: 1725

Filed: January 27, 2004

Docket No.: 00635.0369-US-01

Title: DEVICE AND METHOD FOR PERFORMING MELTING AND CASTING

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450 on

7 August 2006
Jennifer Armstrong
Name

[Signature]
Signature

COMMUNICATION REGARDING REQUEST FOR PRE-APPEAL REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant herewith submits the *attached* Printouts 1, 2 and 3 mentioned in the Request For Pre-Appeal Review documentation for review.

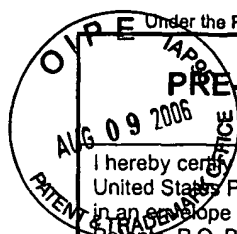
If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (952) 253-4106.

Respectfully submitted,
Altera Law Group, LLC
Customer No. 22865

Date: 7 August 2006

By: [Signature]

Michael B. Lasky
Reg. No. 29,555
MBL/jsa



PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

00635.0369-UUS-01

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on

Signature

Typed or printed name

Jennifer Armstrong

Application Number

10/765319

Filed

27 January 2004

First Named Inventor

Heinz Lambrecht

Art Unit

1725

Examiner

Len Tran

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.

29,555

Registration number

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

Signature

Michael B. Lasky

Typed or printed name

952-253-4100

Telephone number

1 August 2006

Date

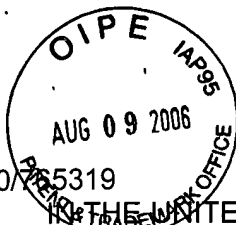
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒

*Total of 6 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Heinz Lambrecht

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Jennifer Armstrong

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REQUEST FOR PRE-APPEAL REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above identified application. No amendments are being filed with this request.

BASIS FOR PRE-APPEAL CONFERENCE

Applicant requests review of the final rejection because of clear error in the last office action. The clear error is evident by misapplication of M.P.E.P section 2143 with respect to the rejections on 35 U.S.C. sec 102 and sec. 103 rejections.

SUMMARY

In short, the examiner has rejected the previously submitted amendment and argument on the basis that "the controller 78 of the Blechner reference is capable of storing data since the controller is a computerized device." This is an assertion which goes well beyond the well defined standard set forth in M.P.E.P section 2143, as will be explained below.

ANALYSIS:

As to the novelty rejection under 35 U.S.C. sec 102, it is clear error to argue that the prior art reference shows all of the features of the claimed invention, when the examiner explicitly admits in the action that the Blechner reference shows a controller which is "capable of storing parameter" and not a control which does have storage of parameters. The use of section 102 is inappropriate since the prior art does not disclose the device. Therefore the section 102 rejection is clear error. On that basis alone, there is sufficient basis for returning this case to the examiner for reconsideration.

Turning to the section 103 rejection (which is fundamentally identical to the sec. 102 rejection), the clear error is the misapplication of M.P.E.P section 2143 which reads as follows:

2143 Basic Requirements of a Prima Facie Case of Obviousness

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The whole Blechner disclosure does not mention a data base in any passage or drawing.

A careful study of Blechner et al in detail reveals the following:

1. In total, the Blechner disclosure mentions and explains the controller or parts of the controller in three places, always referring to Fig. 3 and 4:
2. In column 6, lines 1-5, the controller is introduced and it is simply stated, that the controller 78 activates an electric alternating current from a source 76 which energizes the melt coil 74.
3. In column 6, line 54 through column 7, line 5 the connectivity of the controller is explained in detail. Studying this passage it becomes clear, that the controller operates to not only activate the current for the melt coil 74 but further operates a valve unit 98 to raise or lower a piston 26 and further still the valves 54 and 62 via a relay 104 in order to open these valves as soon as a specific temperature is detected by the pyrometer. By this, the inert gas pressure can be changed and it can be switched between a slow feed and a fast feed of the inert gas.
4. Fig. 3 shows the controller 78 to have a total of one input terminal (temperature sensor 118) and four output terminals (slow feed 108 and fast feed 112, current supply 114, position unit 120). The controller itself consists of 7 components, namely a flip-flop switch 164, a relay 104, a manual override control 152 with associated clock 100, a bi-stable switch 123,124, a power source 102 and a manual override control 158.
5. Apparently, no data base can be integrated into this controller because the controller **does not comprise any logic unit** which would be capable to process specific data extracted from such a data base. The controller 78 is adapted to perform a binary control of the coil current and the gas flow in such a way, that during the heating step the current is supplied to the coil and the gas is fed at slow speed and upon detecting the desired melting temperature by the

pyrometer the current flow to the melt coil is interrupted and the gas flow is switched from slow feed to fast feed.

Apparently, there is **not even a proportional control** of the melting coil current. Such proportional control could be regarded as an *intermediate step* between the claimed logical control based on a data base but Blechner even fails to disclose this intermediate step.

To summarize, when studying all passages and figures of the Blechner et al disclosure, there is no suggestion or motivation in the reference itself to the skilled person to modify the reference in such a way as to incorporate a data base.

The examiner's position that the system is *capable of storing parameters* is contradictory of the above thorough analysis of the Blechner disclosure. When the standard set forth in M.P.E.P section 2143, there is insufficient basis to support the examiner's extrapolation of the teaching of Blechner.

Thus, the first alternative of first basic criteria according to MPEP section 2143 is not met, not to mention M.P.E.P section 2143.01, the requirement that a suggestion or motivation to modify the reference must be found within the reference itself. The detailed argument above succinctly points out that just the opposite is the case in the Blechner document.

As to the second alternative basis for rejection, namely that one skilled in the art would have been able to achieve this combination, we enclose three printouts dealing with the temperature control in dental casting machines as it is performed in competitor's machines of present technology.

The first printout P1 gives a representative report about the situation of temperature control in dental casting. It is stated that "the dental technicians often believe that the best system of controlling the temperature is the estimation by eye". The fact, that this approach is even today the technical basis for temperature control in a number of casting machines is a strong indication and evidence that even the rather simple temperature control mechanism disclosed in Blechner et al, but at least the advanced temperature control method using a data base as claimed would never have been obvious to the skilled person because it was and still is apparently established practice to control the temperature by visual human eye observation and operation of a switch activating or deactivating the heating current.

Printout P2 is an extract of a brochure describing the casting machines of the competitor "Galloni". The temperature control is described in detail on the last but one page. There it is stated, that "the power output is finely adjustable" which is to interpreted, that the heating current can be finely adjusted by the user, namely in a stepless manner. It is further stated in the paragraph below, that "with the infrared optical temperature controller it is possible to read and hold the casting temperature ..." saying that the controller is simply used to hold a specific

temperature after the alloy has been heated to this temperature in order to obtain complete fluidity of the metal. The controller is thus simply used to hold a temperature and in this case it is neither necessary nor obvious to have a data base with parameters for controlling a heating process.

The third printout is an extract of a brochure of another competitor "Manfredi" producing dental casting systems for more than 70 years. In particular the last page of P3 it can be learned, that there is provided a "continuous reading control and stabilization of temperature in the range from 800 to 2000° C". Thus, again the reading of the temperature is only used for stabilizing it but not for controlling the heating cycle using a data base.

The above citations which are cumulative of the references already cited, are important to show that persons skilled in this particular art, were unable to achieve this improvement despite faced with identical problems in the identical field. This long felt need to improved detailed castings, would have been a primary objective of competitive products. If the examiner's unsupported assertion of obviously to a person skilled in the art were true, there was ample opportunity for a competitor to make these "obvious" changes to existing designs. The reality is, that without some proof of motivation from the prior art and without some evidence of his "person skilled in the art" assertion, the best available evidence (the attached printouts) refutes his assertion and puts the burden of proof squarely on the examiner.

With regard to the second basic criteria of MPEP 2143, the printout P1 gives a quite strong indication, that the skilled person would not have a reasonable expectation of success because even today it is believed, that controlling the temperature by eye would be the best system for dental casting. Not even today, the change to an automatic control is really accepted by the dental technicians and surely the acceptance was even lower at the priority date of the application.

Failing to find a motivating prior art reference, the sec. 103 rejection is clear error and a mere unsubstantiated assertion. (See also M.P.E.P section 2112 with respect to Burdens of Proof and sufficiency to assert inherency of a feature.)

To summarize, even when discussing present technology, the use of a data base cannot be found in the general knowledge for dental casting. In contrast, the present technology and in particular the technology before the priority date of the application was based on a *manual approach for controlling the temperature with the help of the eye of the user*. Even when introducing a controller into the dental casting technique. this controller was only used for maintaining a certain temperature (as in the present casting machines of Galloni and Manfredi) or to activate a switch to change the gas-flow or to interrupt the heating current (as disclosed in Blechner). Thus, the use of a data base is not made obvious in the common general knowledge

and the skilled person would not have modified the Blechner reference in such a way to introduce a data base.

As to the third basic criteria according to MPEP 2143, one cannot identify any teaching of a data base in a controller for controlling a dental casting process in the Blechner disclosure or any other prior art reference cited by the Examiner.

Finally, we want to comment on the response of the Examiner to our previously filed arguments. The Examiner argues that "the controller (78) is capable of storing a data base". We have demonstrated above, that the controller (78) of Blechner is not capable of storing such a data base because there is no logical unit which would be adapted to process the data of such a data base.

The Examiner further states, that the controller of Blechner would be "a computerized device". We have studied the Blechner et al disclosure in detail and could not identify any disclosure saying that the controller would be a computerized device. The components of the controller are explicitly listed and shown in the description and the figures. Following this, the controller is a simple electrical circuit for performing binary switch actions, namely to activate or deactivate the heating current and to alternate the gas-flow between slow and fast feed. The controller does not comprise any semiconductor component which would be an essential part of a computerized device. Thus, the controller cannot be titled as computerized device.

Beside this, even when accepting the controller of Blechner et al to be "computerized" we consider that incorporation of a specific data base with a specific data content as claimed in claim 1 is not obvious to the skilled person in view of Blechner because Blechner does not give any suggestion or motivation to incorporate a data base with such specific content.

Thus the burden of proof now falls on the examiner to support his contention, that what is not shown, is still obvious and taught in the Blechner reference

It is therefore submitted that the final rejection be withdrawn and the case be now passed to allowance.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (952) 253-4106.

Date: 7 August 2006 By: _____

Respectfully submitted,
Altera Law Group, LLC
Customer No. 22865

Michael B. Lasky
Reg. No. 29,555
MBL/jsa

p1

<input type="checkbox"/> Home Page					
<input type="checkbox"/> Aseg Galloni	<input type="checkbox"/> Il Know	<input type="checkbox"/> I Prodotti	<input type="checkbox"/> La	<input type="checkbox"/> News e Fiere	<input type="checkbox"/> Contattaci

COMPANY PROFILE TRAINING CENTER

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DENTAL	<input type="checkbox"/>
Preface	<p>The dental technicians often believe that the best system of controlling the temperature is the estimation by eye. This might be true at a certain extent but temperature control is a too important factor to have it determined by the skill the operator only. The solution offered by the Galloni casting machines is completely automatic and consequently no high skill level is required to obtain castings with precise consistency being the complete control of the melting by the operator's fingertips.</p> <p>The rumour that the induction casting machine "burns the alloy" is not founded. That might occur with machines without a proper power regulation but this problem has been completely solved with the Galloni casting machines like OKAY, OKAY PLUS and OKAY VAC. The precise adjustability of the melting power regulates the heating energy and 1550 °C are smoothly reached without overshoot of the preset casting temperature. The digital electronic eye and the automatic control devices provide the temperature stabilization of the melting, thus ensuring unaltered metallurgical characteristics of the alloy.</p>
Fluidity of the alloy	
Temperature control	
Centrifugal process	
Crucibles	
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Automatic temperature control

- Proportional power adjustment when preset casting temperature is approached
- With proportional control the Galloni casting machines give precise stabilization of the preset casting temperature.

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